



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF JANUARY 27, 2005**

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan, King, Lorenz, Lydon, Sharma, and Weaver

ABSENT: None

STAFF PRESENT: Jeff Schwob, Planning Director  
Larissa Seto, Senior Deputy City Attorney II  
Norm Hughes, City Engineer  
Kathleen Livermore, Senior Planner  
Barbara Meerjans, Associate Planner  
Cliff Nguyen, Planner II  
Jennifer Andersen, Redevelopment Project Manager  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Walter Garcia, Video Technician

INTRODUCTION OF NEW  
PLANNING COMMISSION  
MEMBERS:

**Chairperson Harrison** introduced new Commission Member Dirk Lorenz.

**Commissioner Lorenz** stated that he was acquainted with all the other Commissioners and thanked Mayor Wasserman and the City Council for his appointment. He also thanked staff for their help.

**Chairperson Harrison** introduced new Commissioner Sue Chan.

**Commissioner Chan** echoed Commissioner Lorenz's comments and stated that it was amazing that a Midwest, corn-fed native was serving on the Planning Commission for the fourth largest city in the Bay Area. She looked forward to being a partner in making good decisions for the City.

APPROVAL OF MINUTES: Regular Minutes of January 13, 2005, were approved as submitted.

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 2, 6, 7, AND 8.

IT WAS MOVED (KING/WEAVER) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1, 7, AND 8.

- Item 1. **ATRIA TOWNHOMES GPA & R-3 REZONING – 41762 to 41786 Fremont Boulevard – (PLN2004-00177)** - to consider a General Plan Amendment from 15 to 18 dwellings per acre to 18 to 23 dwellings per acre and Rezoning from R-G-29 to R-3-23 for a 0.686-acre lot property located in the Irvington Planning Area. A Mitigated Negative Declaration has been prepared for the consideration of this project.

**HOLD PUBLIC HEARING;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES. AS A RESULT, RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT MITIGATED NEGATIVE DECLARATION FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FIND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL APPROVAL OF THE MITIGATION MONITORING PLAN FOR THE PROJECT;**

**AND**

**FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**RECOMMEND TO COUNCIL APPROVAL OF PLN2004-00177 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FOR THE PROJECT IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN AMENDMENT EXHIBIT);**

**AND**

**RECOMMEND PLN2004-00177 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "B" (REZONING EXHIBIT).**

- Item 7. **CENTERVILLE MARKET PLACE – 37070 Fremont Boulevard – (PLN2005-00129)** - to consider a Finding of General Plan conformity regarding acquisition of the Cemetery Panhandle Parcel, and disposition of real property related to the Disposition and Development Agreement (DDA) and Scenario Owner Participation Agreement (OPA), for a vertical mixed-use development (110 residential units and 58,000 gross square feet of retail space) on a 6.8 acre site located in the Centerville Planning Area. A Mitigated Negative Declaration has been prepared for this project.

**Chairperson Harrison** disclosed that he was a part owner in a lease on property on Maple Street, which was within 500 feet of the project. However, it was not a conflict of interest and he would vote on this item.

**Commissioner Lorenz** disclosed that he had an interest on a leasehold on properties on Fremont Boulevard, which were not a conflict of interest.

**HOLD PUBLIC HEARING;**

**AND**

**RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;**

**AND**

**RECOMMEND THE CITY COUNCIL: (A) FIND THAT THE PROPOSED PROJECT WOULD NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT BASED UPON THE IMPLEMENTATION OF THE IDENTIFIED MITIGATION MEASURES; (B) APPROVE THE NEGATIVE DECLARATION WITH A CERTIFICATE OF FEE EXEMPTION; AND (C) FIND THAT THE NEGATIVE DECLARATION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**FIND PLN2005-00129, AND THE RELATED AGREEMENTS, LAND ACQUISITIONS AND LAND DISPOSITIONS ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE RESOLUTION;**

**AND**

**RECOMMEND PLN2005-00129 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (RESOLUTION).**

- Item 8. GRIMMER GENERAL PLAN AMENDMENT AND REZONING – 40990 Grimmer Boulevard (PLN2005-00173)** - to consider a General Plan Amendment and Rezoning to add a Residential Medium density designation of 18-23 du/ac to the existing Community Commercial land use designation at 40990 Grimmer Boulevard and to rezone the site from Community Commercial (Irvington Overlay) (C-C(I)) to P2004-92(I) Preliminary Planned District allowing all existing Community Commercial Irvington Overlay (C-C(I)) zoning provisions as well as mixed use and/or residential development of 18-23 units per acre, respectively, for the subject site. The site is approximately 0.51 acres located on the corner of Grimmer Boulevard and Irvington Avenue in the Irvington Planning Area. A Mitigated Negative Declaration was approved for PLN2004-00092, which covered the proposed redesignation and rezoning of this site.

**HOLD PUBLIC HEARING;**

**AND**

**RECOMMEND THAT, BASED ON THE INFORMATION AVAILABLE TO DATE, THE CITY COUNCIL FIND THE INITIAL STUDY THAT WAS PREPARED FOR PLN2004-00092 COVERS THE SUBJECT SITE AND HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY ADDITIONAL OR POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL RELY UPON THE MITIGATED NEGATIVE DECLARATION THAT WAS PREPARED FOR PLN2004-00092 AND FIND IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**FIND THAT GENERAL PLAN AMENDMENT AND PLANNED DISTRICT REZONING (P-2004-92(I), AS AMENDED) ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND THAT THE EXISTING COMMERCIAL SITE HAS RELATIVELY UNIQUE FEATURES AND THAT ITS DESIGNATION FOR MIXED-USE AND/OR RESIDENTIAL DEVELOPMENTS REQUIRES SPECIFIC DESIGN CONSIDERATIONS TO ACHIEVE THESE OBJECTIVES; AND ARE IDENTIFIED IN THE HOUSING ELEMENT SUCH THAT THE PROPERTIES CAN BEST BE DEVELOPED AS P DISTRICTS;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL APPROVE PLN2005-00173 TO AMEND THE GENERAL PLAN LAND USE DIAGRAM TO DESIGNATE THE SUBJECT SITE WITH ADDITIONAL RESIDENTIAL LAND USE DESIGNATION, AND REZONE IT TO PLANNED DISTRICT (P-2004-92(I)) IN CONFORMANCE WITH EXHIBITS "A", "B", AND "C." (GENERAL PLAN AMENDMENT, REZONING EXHIBIT AND PLANNED DISTRICT EXHIBIT).**

The motion carried by the following vote:

AYES:	7 – Chan, Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

A separate vote was taken on Item 2, because Commissioner Lorenz stated that he did business with the applicant, which represented a conflict of interest.

IT WAS MOVED (KING/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (6-0-1-0-0) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 2.

**Item 2.     WASHINGTON BOULEVARD – 982-990 Washington Boulevard – (PLN2004-00196)** - to consider Tentative Tract Map 7471 and a Preliminary Grading Plan for a 26-lot subdivision on 3.96-acre site located in the Mission San Jose Planning Area. A Mitigated Negative Declaration was previously prepared and approved for this project.

#### **MODIFICATION TO STAFF REPORT**

*The developer has requested some flexibility in the conditions of approval related to front yard retaining walls, specifically the height limitations. The developer is still working on the design, appearance, and finishes for these front yard walls and is concerned that the strict enforcement of the height limits may compromise the sought after design aesthetic. Additionally, the developer has indicated the intent to incorporate pilasters with caps at the ends and corners of the wall. The pilasters would project from the wall face and the pilaster and cap would be taller than the wall.*

*Staff has considered the developers concern and agrees that flexibility should be incorporated into the relevant conditions of approval. However, staff is concerned that wall design remains pedestrian friendly and safe from the standpoint of vehicle site distance and visibility. Therefore, staff has modified the conditions of approval to provide added flexibility during the final map and subdivision improvement plan-checking phase.*

#### **MODIFICATION OF STAFF REPORT – GRADING/TOPOGRAPHY SECTION**

- *Except as otherwise provided in these conditions, front yard retaining walls ~~shall~~ should be limited to a maximum height of 18 inches. Final retaining wall design, including wall height, shall be subject to review and approval of the City Engineer and Planning Director prior to final map approval. Height Retaining wall height shall include wall finishes, such as wall caps, pilaster caps, and tiles, and shall be measured from the elevation of the*

back of public sidewalk to the elevation of the top of finished wall. Retaining wall footings shall not encroach into the public right-of-way.

- Front yard retaining walls shall be setback a minimum of 24 inches from the street right-of-way. Pilasters, pilaster caps, and wall caps shall be setback a minimum of 21 inches from the street right-of-way. The setback shall be measured from the property line to the finished surface of the retaining wall, pilaster, pilaster cap, or wall cap. Front yard retaining walls shall also be setback a minimum of 18 inches from the edge of the driveway pavement within the lot.
- The front yard retaining wall in lot 24 shall be limited to a maximum height of 24 36 inches, exclusive of any building code required railing, and shall be setback a minimum of 36 inches from the street right-of-way. Final retaining wall design, including wall height, shall be subject to review and approval of the City Engineer and Planning Director prior to final map approval. Height Retaining wall height shall include wall finishes, such as wall caps, pilaster caps, and tiles, and shall be measured from the elevation of the back of public sidewalk top of finished wall to the finished grade elevation of at the bottom of the wall. Retaining wall footings shall not encroach into the public right-of-way.

#### **REVISED PRELIMINARY GRADING PLAN CONDITIONS OF APPROVAL**

**Conditions 5, 6, & 7 shall be deleted and replaced with the following conditions:**

5. Except as otherwise provided in these conditions, front yard retaining walls should be limited to a maximum height of 18 inches. Final retaining wall design, including wall height, shall be subject to review and approval of the City Engineer and Planning Director prior to final map approval. Retaining wall height shall include wall finishes, such as wall caps, pilaster caps, and tiles, and shall be measured from the elevation of the back of public sidewalk to the elevation of the top of finished wall. Retaining wall footings shall not encroach into the public right-of-way.
6. Front yard retaining walls shall be setback a minimum of 24 inches from the street right-of-way. Pilasters, pilaster caps, and wall caps shall be setback a minimum of 21 inches from the street right-of-way. The setback shall be measured from the property line to the finished surface of the retaining wall, pilaster, pilaster cap, or wall cap. Front yard retaining walls shall also be setback a minimum of 18 inches from the edge of the driveway pavement within each lot.
7. The front yard retaining wall in lot 24 shall be limited to a maximum height of 36 inches, exclusive of any building code required railing, and shall be setback a minimum of 36 inches from the street right-of-way. Final retaining wall design, including wall height, shall be subject to review and approval of the City Engineer and Planning Director prior to final map approval. Retaining wall height shall include wall finishes, such as wall caps, pilaster caps, and tiles, and shall be measured from the elevation of the top of finished wall to the finished grade elevation at the bottom of the wall. Retaining wall footings shall not encroach into the public right-of-way.

**HOLD PUBLIC HEARING;**

**AND**

**FIND THE PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION WITH A CERTIFICATE OF FEE EXEMPTION ADDRESSES THE PROPOSED PROJECT AND NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;**

**AND**

**FIND PLN2004-00196 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL**

**PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND PLN2004-00196 PER EXHIBIT "A" (TENTATIVE TRACT MAP 7471 AND; EXHIBIT "B" (FINDINGS AND CONDITIONS); EXHIBIT "C" (PRELIMINARY GRADING PLAN); AND EXHIBIT "D" (FINDINGS AND CONDITIONS) FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE, EXCEPT FOR THE CUL-DE-SAC PAVEMENT WIDTH, WHICH HAS BEEN MODIFIED TO PRESERVE EXISTING OLIVE TREES;**

**AND**

**APPROVE PLN2004-00196 IN CONFORMANCE WITH EXHIBIT "A" (TENTATIVE TRACT MAP 7471 AND; EXHIBIT "B" (FINDINGS AND CONDITIONS); EXHIBIT "C" (PRELIMINARY GRADING PLAN); AND EXHIBIT "D" (FINDINGS AND CONDITIONS).**

The motion carried by the following vote:

AYES: 6 – Chan, Harrison, King, Lydon, Sharma, Weaver

NOES: 0

ABSTAIN: 1

ABSENT: 0

RECUSE: 0 – Lorenz

A separate vote on Item 6 was taken because Commissioner Lorenz stated that he did business with the applicant, which represented a conflict of interest.

IT WAS MOVED (WEAVER/KING) AND CARRIED BY THE FOLLOWING VOTE (6-0-1-0-0) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NO. 6.

**Item 6. FREMONT HOSPITAL – 39001 Sundale Drive – (PLN2005-00092) - to consider an amendment to a Conditional Use Permit to add 16 additional beds at an existing behavioral hospital (for a total of 96, where 80 was previously allowed) for property located in the Central Planning Area. This project is categorically exempt from CEQA per Section 15301, Existing Facilities.**

**HOLD PUBLIC HEARING;**

**AND**

**FIND THAT PLN2005-00092 IS EXEMPT FROM FURTHER CALIFORNIA ENVIRONMENTAL QUALITY ACT REVIEW PURSUANT TO GUIDELINES SECTION 15301 (EXISTING FACILITIES);**

**AND**

**FIND THAT PLN2005-00092 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT CONFORMS TO THE GOALS AND POLICIES AS ENUMERATED IN THE STAFF REPORT AND THE FINDINGS RECOMMENDED HEREWITH;**

**AND**

**APPROVE PLN2005-00092, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".**

The motion carried by the following vote:

AYES: 6 – Chan, Harrison, King, Lydon, Sharma, Weaver

NOES: 0

ABSTAIN: 0

ABSENT: 0

RECUSE: 1 – Lorenz

## **PUBLIC COMMUNICATIONS**

### **ORAL COMMUNICATIONS**

### **PUBLIC HEARING ITEMS**

- Item 3.**     **FOSTER RESIDENCE MODIFICATIONS – 304 Castro Lane – (PLN2005-00013)** – to consider a Planned District Minor Amendment to modify approved architectural details of exterior alcoves, openings, terraces and associated landscaping for an existing detached single-family dwelling under construction in the Mission San Jose Planning Area. The proposed project is exempt from CEQA review under Section 15301.

**Chairperson Harrison** stated that he had not been able to visit the site and, after reviewing the report and being aware of the complexities of this item, he preferred that this item be continued. However, he suggested that the public hearing be held.

**Commissioner King** and **Commissioner Weaver** agreed.

**Commissioner Lydon** had visited the site and felt that hasty action should be avoided.

**Roger Shank**, applicants' representative, welcomed the new commissioners and acknowledged that the house was different from what was originally approved. The applicants had not realized that the modifications were in violation of the original approval, but were interested in moving forward and working with the city. The city's recommendation to remove the wall and the expansion at the rear, along with changing the driveway would create a hardship. Three sets of revised drawings had been submitted since July 2004 and they had not been made aware that Measure T was an issue, as noted in the staff report. He questioned the accuracy of the 30 percent slope analysis. The drainage ditch was oversized and was larger than city requirements. The back porch and overhang did not encroach into the 30 percent slope. The front driveway was expanded to allow for additional parking with the encroachment being minor and the retaining walls were very short.

**Chairperson Harrison** opened the public hearing.

**Susan Gearhart**, Friends of the Hill Area Initiative, stated that after recently reading the staff report, she became aware of all of the implications this project presented, which resulted in the late email she sent to staff today with her concerns. Staff's recommendations reflected the law. The applicants' requests violated Measure T, were inconsistent with the General Plan and were beyond the City's authority to approve. The applicants had made the decision to build a massive home with a five-foot backyard when they could have gone another way. Without approval, they had carved out five more feet to have a ten-foot backyard and added terraces that had not been approved, along with other things that were in conflict with Measure T. The change in roof materials, along with the two-story entry feature, made the house more visible from public areas.

**James Gearhart**, Friends of the Hill Area Initiative, agreed that further study should be done before a vote was taken. Staff's report was excellent. He suggested one or two study sessions to better understand Measure T and its implications. He doubted that the applicants' representative was not aware of Measure T, because he had been a former City planner for 25 years.

**Mr. Shanks** encouraged the Commissioners to visit the site to better understand the problems. The encroachments were minor and the visibility was no more than it had been before. The additional entry feature was below the roofline and did not add to the visibility of the home. He also stated that the applicants had four children and were living in a hotel, so they were very worried about time delays.

**Commissioner Weaver** asked if the Commissioners should save the material concerning this item.

Some Commissioners decided to keep the material.

IT WAS MOVED (WEAVER/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0-0) THAT THE PLANNING COMMISSION **CONTINUE TO FEBRUARY 24, 2005.**

The motion carried by the following vote:

AYES:	7 – Chan, Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

- Item 4.** **CHAN TENTATIVE PARCEL MAP – 2600 Sunnycrest Court – (PLN2005-00032)** – to consider a Tentative Parcel Map for a three-lot residential subdivision on 1.04 acres located in the Mission San Jose Planning Area. This project is categorically exempt from CEQA per Section 15315; minor land divisions.

**Mike Quinlan**, attorney representing the Chans, recalled that in 1998 objections were made concerning a two-story home on this site. However, most of the neighbors who had originally objected had moved away. The Chans had received signed letters from neighbors who did not object, so they had moved forward with their application. However, new objections had surfaced because of a view obstruction if two story homes were built on this site. Zoning allowed a 30-foot high home and some of the views from this cul-de-sac were currently obstructed by 40-foot trees. The lot size was larger than 8,000 square feet, but had an easement that could not be built on. Traffic should not be greatly affected by the addition of one more house.

**Commissioner Lydon** asked if only one home was being built on this lot.

**Mr. Quinlan** replied that a two-lot subdivision had been approved earlier. His clients wished to add a third home on a third lot.

**Commissioner Sharma** asked if the original objections concerned the neighbors' views and why the applicant had decided to add the extra home, which would be on substantially smaller usable space, approximately 6,000 square feet.

**Mr. Quinlan** thought different neighbors now had issues. He agreed that much of the land could not be used. The applicant planned to live in one home with her two daughters living in the other two homes.

**Commissioner Chan** stated that she and the applicants were not related. She asked if the applicant had the list of neighbors who had approved the project and if his client had spoken to the neighbor who had objected to this project.

**Mr. Quinlan** stated that list was created in 2000 and the neighbors who approved could have changed. Discussion had occurred.

**Kenny Wong**, engineer, stated that he knew of one neighbor who wished to express his views on this project.



**Chairperson Harrison** opened the public hearing.

**Josey Zhou**, next-door neighbor on Sunnycrest Court, stated that she had spoken to the applicant about her plans and she had no objection to the project.

**Qi Gu**, Sunnycrest Court neighbor, asked if the Commissioners had the letter from Gary Pereira. He asked why another house needed to be added to an approved project. He brought up traffic and safety concerns for the six children who played in the court.

**Chairperson Harrison** stated that the Commission had the letter.

**Commissioner Sharma** asked if the speaker owned the property where he lived.

**Mr. Gu** replied that he owned the property.

**Bob Walter**, Sunnycrest Court, stated that he had lived at this location since 1973 and had learned that a third house was proposed for this property from a neighbor. He may have agreed to two homes in 2000, but he did not necessarily agree to three homes. A two-story home would not affect him, as his property was down at the end of the court on Olive Avenue and Sunnycrest Court. His elderly neighbors, who were unable to attend, also disagreed with three houses and worried about the two stories planned for the homes.

**Commissioner Lydon** asked if his neighbors had received a notice.

**Mr. Walter** did not know if his neighbors had received a notice.

**Jess Loya**, Sunnycrest Court resident since 1982, stated that he also had not been noticed. In 1998 the plan was originally for one home to be built on the property. Then there were two planned. He wondered if a fourth house would be proposed next year. He also did not approve of demolishing the existing home and adding the third house. His view of Mission Peak would be compromised by another two-story home. Construction would negatively impact the neighborhood. He believed that the local habitat would be impacted by the grading and fill planned for this project. He complained that water inundated Sunnycrest Court from Washington during heavy rainstorms.

**Commissioner Chan** asked if he was aware of the 1998 approval for a subdivision into two lots and his opinion on how three, rather than two, lots would affect the area property values.

**Mr. Loya** replied that he had been aware of the possibility that the lot might be subdivided, but he was unaware of it being approved. He knew that homes in California kept going up in value, but he declined to guess at how the property values would be affected by this project.

**Cheri Pereira**, Sunnycrest Court resident, stated that she was the new neighbor in the area. They might not have decided to purchase their home, if they had known of the plans to split the lot into three lots, which would be very crowded. Her husband also worried about the environmental impacts.

**Mr. Wong** pointed out that no matter how many houses were built on the lot, the storm water flow rate would be constant. Total fill would probably be less than 100 cubic yards. The storm drain on Sunnycrest Court, mentioned by the previous speaker, was large enough to handle much more storm water than was currently going into the drain.

**Mr. Quintana** closed with showing a photo of the street and Mrs. Pereira's home, whose husband had written the letter mentioned by another speaker. The view from her home was of foliage, which this project would not obstruct. He believed that this project would increase the neighbors' property values.

**Chairperson Harrison** closed the public hearing.

**Commissioner Lorenz** asked if there were any conditions concerning the hours and days allowed for construction. He asked at what part of the process was architectural style brought before the City. He encouraged the applicant to work with the neighbors and to make certain that the architectural style was consistent with the existing neighborhood.

**Planning Director Schwob** replied that a condition could be added that restricted construction to the usual 7:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturday, as he did not see it as a part of the conditions in the staff report. Architectural style would be reviewed during Development Organization and compliance with zoning requirements would then be evaluated.

**Commissioner King** stated that he always planned to vote staff's recommendation, unless new information convinced him that the staff recommendation was incorrect. He believed that property owners should be allowed to do what they wanted with their properties, as long as they were in compliance with city ordinances. He was disturbed about the speakers who stated that they had not heard of the change to the subdivision and had not had a chance to voice their concerns before this hearing.

**Planning Director Schwob** clarified that notices were sent to property owners within 300 feet of the project ten days before the public hearing, which explained why some of the speakers had not received notices, because they were beyond the 300-foot distance. The notice was always published in the paper, as well. Staff reports were available the Friday before the scheduled hearing on the following Thursday. If comments were received before that Friday, they were included within the staff report. In some cases, when there was an environmental document included within the staff report, notices were mailed to property owners 20 to 30 days in advance. He had not heard anything from the speakers that indicated that the subdivision was not in compliance with the General Plan and zoning, and that was, typically, what staff's recommendation was based upon.

**Commissioner Sharma** was puzzled why the extra unit should be added at the rear of the property. There was a general consensus that agreed with what had been approved by an earlier Planning Commission, so he would not approve the additional home on the smaller lot.

**Chairperson Harrison** asked if the Commission denied this request, would the applicant be allowed to build the two homes, as was approved earlier. He asked if the applicant appealed a decision made by this Planning Commission and it was denied, would they still have what they had before.

**Senior Deputy City Attorney Seto** stated that he was correct. The applicant would have approval for a two-lot subdivision.

**Commissioner Chan** asked if the Declaration of Restrictions (included in Mr. Pereira's letter) was still applicable.

**Senior Deputy City Attorney Seto** replied that the document would be binding, but the City was not a party to the Covenants, Conditions and Restrictions, as they were a private agreement among the property owners within a certain subdivision. When the ten-year period was reached, the City assumed the CC&Rs had been renewed and were still in effect. It was the private property owners who had to enforce them. The gross lot size met the CC&R requirements, where the net lot size did not, which could have caused some confusion.

**Commissioner Lydon** felt closer to Commissioner King's position than anything else. He had visited the site twice and, in his opinion, the two-story houses would blend into the existing foliage. He was not convinced that anyone's view would be disrupted. The Sunnycrest Court neighborhood was one of the city's nuggets; it was a well-kept neighborhood. However, "you could take it to the bank, somebody has designs on it; something's going to happen" when it comes to any empty lot in the city. Absent any convincing evidence that could show what the site line would look like, he found that the applicant had a right to subdivide her lot, as requested. Yes, there would be traffic with the construction, but it would not last forever.

**Commissioner King** believed that three houses would make little difference from the two houses that had already been approved.

IT WAS MOVED (KING/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (6-1-0-0-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**ADD CONDITION THAT CONSTRUCTION SHALL BE BETWEEN THE HOURS OF 7:00 A.M. TO 7:00 P.M. MONDAY THROUGH FRIDAY, AND 9:00 A.M. TO 6:00 P.M. ON SATURDAY;**

**AND**

**APPLICANT SHALL WORK WITH NEIGHBORS CONCERNING THE ARCHITECTURE AND DETAILS OF THE HOMES;**

**AND**

**FIND THE PROPOSED SUBDIVISION IS EXEMPT FROM FURTHER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REVIEW PURSUANT TO GUIDELINES SECTION 15315 (MINOR LAND DIVISIONS);**

**AND**

**FIND PLN2005-00032 (TENTATIVE PARCEL MAP 8455) IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN;**

**AND**

**FIND PLN2005-00032 (TENTATIVE PARCEL MAP 8455), AS SHOWN ON EXHIBIT "A" FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;**

**AND**

**APPROVE PLN2005-00032 (TENTATIVE PARCEL MAP 8455), IN CONFORMANCE WITH EXHIBIT "A", BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "B".**

The motion carried by the following vote:

AYES: 6– Chan, Harrison, King, Lorenz, Lydon, Weaver

NOES: 1 – Sharma

ABSTAIN: 0

ABSENT: 0

RECUSE: 0

**Chairperson Harrison** called for a recess at 8:10 p.m.

**Chairperson Harrison** called the meeting back on order at 8:20 p.m.

**Item 5. IRVINGTON VILLAGE TRACT 7571 – 40800 Grimmer Boulevard – (PLN2005-00039)** – to consider Vesting Tentative Tract Map 7571 and a Private Street for a 71-lot (215 dwelling units) subdivision located in the Irvington Planning Area. A Mitigated Negative Declaration has been previously prepared and adopted for the General Plan Amendment and Rezoning of the site, which includes the anticipated development of this site.

## **MODIFICATION TO STAFF REPORT**

*Page 4: Subdivision Analysis: The applicant has proposed a vesting tentative map to create 74 lots. ~~and 1 designated remainder (the existing Tri-City Sporting Goods site).~~ There is no designated remainder as this parcel for the Tri-City Sports site was created by the Lot Line Adjustment*

*VTTM Condition 6: The applicant shall execute and record ~~on~~ an Operations and Maintenance Agreements to implement and maintain these NPDES features*

*VTTM Condition 12: All new utility service connections, including electrical and communications, shall be installed underground. Electrical transformers shall be installed in underground vaults within the public service easement. In accordance with Fremont Municipal Code, Title VI, Chapter 3. Utility Underground Districts, surface mounted transformers may be permitted within any side or rear yard which is not bounded by a street lot line on the apartment parcel (Lot 54). The location, enclosure design, and screening of any proposed surface mounted transformer on Lot 54 shall be subject to Development Organization review and approval, prior to issuance of building permits.*

**Chairperson Harrison** opened the public hearing.

**Kanwolnt Mann**, veterinarian within the city, stated that his office was directly across the street from the project and that he was highly in favor of it. His concern involved fast moving traffic directly in front of his office. Since the mall had been built on the other side of Durham Road, he and his 18 staff had experienced near-accidents due to the curve near Grimmer Avenue. He requested that a signal be installed by the developer to facilitate exiting from his property, along with helping medically handicapped people next door cross the street. He and his staff had occasionally helped these people cross the street when traffic was heavy.

**City Engineer Hughes** understood that City Transportation Engineering staff were investigating the speaker's concerns. All intersections without signals were reviewed every year. Irvington Avenue was not currently highly placed on the priority list for a signal. If something could be done in the interim, it would be done, along with monitoring the traffic volume and accident history. He agreed that development elsewhere could create additional impacts. However, the traffic report for this project had not identified much additional traffic along Irvington Avenue, because there was no direct access to Irvington Avenue.

**Chairperson Harrison** thanked the speaker for bringing his concerns to the public hearing, as public safety was Number One. He asked if a traffic study performed by the speaker could be added to the study performed before the project to ascertain if a signal was warranted before the project was built, which could be more than a year.

**City Engineer Hughes** stated the traffic studies performed in conjunction with future developments looked at future projected traffic and if it would require a signal. The traffic engineers routinely communicated with the Police Department and they received all accident reports.

**Dr. Mann** stated that seven out of ten times when he left his building, he had to make a right turn, because he was unable to make a safe left turn.

**Commissioner Lydon** asked if Grimmer Boulevard would be divided when the project was finished.

**City Engineer Hughes** replied that he was not aware of any changes on Grimmer Boulevard at that location associated with this project.

**Commissioner Lydon** asked if, when the traffic traveled around the bend, it was at an unsafe speed by the time it arrived at the speaker's business location.

**Dr. Mann** agreed that he was correct.

**Commissioner Lorenz** asked if Dr. Mann could access Davis Street from behind the commercial buildings on Grimmer Boulevard.

**Dr. Mann** stated that a fence had been erected by the landlord along the vacant lot, which did not allow entrance to Davis Street. He understood that there was an easement there and he believed that it should be open.

**Chairperson Harrison** assured the speaker that his comments would be passed on to the Police and to the Traffic Engineering Departments.

IT WAS MOVED (WEAVER/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (7-1-0-0-0) THAT THE PLANNING COMMISSION

**HOLD PUBLIC HEARING;**

**AND**

**FIND THE PREVIOUS INITIAL STUDY CONDUCTED FOR THE GENERAL PLAN AMENDMENT AND REZONING HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;**

**AND**

**FIND THAT THE PREVIOUS NEGATIVE DECLARATION ADOPTED FOR THE GENERAL PLAN AMENDMENT AND REZONING CONSIDERED ALL IMPACTS RELATED TO THE PROPOSED PROJECT, AND THAT NO NEW IMPACTS WILL RESULT FROM THIS DEVELOPMENT;**

**AND**

**FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS, HOUSING AND LAND USE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**APPROVE PLN2005-00039, AS SHOWN ON EXHIBIT "A" (VESTING TENTATIVE TRACT MAP 7571 AND PRIVATE STREET), SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBITS "B" AND "C."**

The motion carried by the following vote:

AYES:	7 – Chan, Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

## **MISCELLANEOUS ITEMS**

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Election of Vice Chairperson

**Commissioner Lydon** was nominated and approved by all present to be Vice Chairperson for 2005.

- Discussion on the League of California Cities 2005 Planners Institute

**Planning Director Schwob** stated that information was in the Commissioners' packets regarding the Institute that would be held in April in Pasadena. The City would pay for the new Commissioners to attend the conference, along with Commissioner King, who was unable to attend last year. The tradition had always been that individual attendees paid transportation and the hotel. If interested, he asked that Maria Salinas be contacted. He would check to see if the City would pay transportation, considering the distance.

- Confirm Study Session for February 24, 2005 RE: Measure T Presentation

**Planning Director Schwob** stated that staff would like to present the study session for Measure T at 6:00 p.m., as related items were scheduled to be heard at that Commission hearing. He also would like to meet with Commissioner Chan and Commissioner Lorenz to provide background on hill area regulations.

**Chairperson Harrison** suggested starting at 5:30 p.m. to allow enough time for this important item.

**Commissioner Lydon** asked if other Commissioners could attend the background meeting for hill area regulations.

**Commissioner King** also expressed interest in attending the background meeting. He announced that Rotary International would celebrate its 100<sup>th</sup> birthday and he would be traveling on February 24<sup>th</sup>. However, he would be available on February 10<sup>th</sup>.

**Senior Deputy City Attorney Seto** stated that if a quorum of the Planning Commission wished to attend the background meeting, it would have to be noticed as a special meeting.

It was decided to hold a hill area regulations Study Session on Thursday, February 10<sup>th</sup> at 6:00 p.m. Staff would contact Commissioners concerning the time and place for the annual Planning Commission dinner. Staff would also contact the Commissioners in the near future regarding the annual retreat, which was usually held in the afternoon when staff was available to meet with the Commissioners.

**Senior Deputy City Attorney Seto** reminded the Commission Members about a note in their packets concerning potential liability for Commissioners, personally.

**Planning Director Schwob** stated that a list of contacts for Planning Commissioners was also in their packets.

**Commissioner Weaver** stated that her fax and work number were incorrect.

- Information from Commission: Commission members may report on matters of interest.

**Commissioner Lydon** stated that when he visited 304 Castro, he contacted a next-door neighbor to see if they had any reaction to the amended project, Item 3. They had not received a notice. He knew that the mail was not an exact science, but something more needed to be tried. He suggested that notices be sent to the 50 closest addresses rather than property within 300 feet, as sometimes no one lived within that radius.

**Planning Director Schwob** promised to look into the notification for that item. That project would be renoticed. In the past, staff had heard that the notice had been set aside with bills or had been thrown away. He stated that the last time Commissioner Lydon made that suggestion, staff had looked into it. Legally, the City was obligated to notify within a 300-foot radius.

**Chairperson Harrison** recalled that the Boy Scouts had gone door-to-door with some kind of a notice in Centerville some time ago. He suggested that volunteer groups might be interested in doing something like that with regard to notices.

**Commissioner King** believed that most people who claimed they had not received a notice, had actually received one, if they were within the 300-foot radius. He asked how many Commissioners had to be present to hold a meeting.

**Planning Director Schwob** replied that four members, a quorum, were needed to conduct the meeting and the majority of the membership, or four affirmative votes must be cast to approve a General Plan Amendment or rezoning.

The possibility of canceling the meeting of April 14<sup>th</sup> was discussed, if more than three Commissioners wished to attend the Planners Institute.

Meeting adjourned at 9:00 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte  
Recording Clerk

Jeff Schwob, Secretary  
Planning Commission